



U.S. SMALL BUSINESS ADMINISTRATION  
WASHINGTON, D.C. 20416

OFFICE OF CHIEF COUNSEL FOR ADVOCACY

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November 6, 1998

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Ms. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
1919 M St., N.W.  
Suite 222  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

RE: Ex Parte Presentation in a Non-Restricted Proceeding  
In the Matter of GTE Telephone Operating Cos. GTOC Tariff No. 1 GTOC Transmittal No. 1148  
(CC Dkt. No. 98-79).


Dear Ms. Salas:

The Office of Advocacy, U.S. Small Business Administration, in accordance with Section 1.1206 of the Commission's rules, hereby respectfully submits two copies of the enclosed written *ex parte* presentation regarding the above-referenced proceeding.

The purpose of this presentation is to recommend, that if the Commission decides that dial-up access to the Internet is an interstate service, it should phrase this decision as a tentative conclusion in a notice of proposed rulemaking and permit an opportunity for public notice and comment.

Thank you for your assistance on this matter. Please call with any questions.

Very truly yours,

  
Eric E. Menge  
Assistant Chief Counsel for  
Telecommunications

Office of Advocacy  
U.S. Small Business Administration  
409 Third St., S.W.  
Suite 7800  
Washington, D.C. 20416  
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cc: The Honorable William E. Kennard  
The Honorable Susan Ness  
The Honorable Harold Furchtgott-Roth  
The Honorable Michael Powell  
The Honorable Gloria Tristani







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OFFICE OF CHIEF COUNSEL FOR ADVOCACY

November 6, 1998

The Honorable William E. Kennard  
Chairman  
Federal Communications Commission  
1919 M St. N.W.  
Room 814  
Washington, D.C. 20554

Re: CC Docket No. 98-79  
GTE Telephone Operating Cos., GTOC Tariff No. 1, GTOC Transmittal No. 1148

Dear Chairman Kennard:

Last week the Federal Communications Commission released a Memorandum Opinion and Order which found GTE's ADSL service to be an interstate service. In addition, the FCC stated that it would consider the nature of dial-up access to the Internet in a separate Order to be released in the next week. While the Office of Advocacy currently has no comment on the FCC's decision in the case of GTE's ADSL service, Advocacy is concerned that departing from current state and federal policy on dial-up Internet access without a rulemaking proceeding may not satisfy the Administrative Procedure Act.

Under the current regulatory scheme, more than twenty State Commissions have found dial-up Internet access to be a local service. These State Commissions have exercised their authority to allow interconnection agreements to require incumbent local exchange carriers to compensate competitive local exchange carriers for dial-up Internet traffic. Also, in its Access Charge First Report and Order, the Commission found that Internet Service Providers ("ISPs") are end users for the purposes of the access charge system and that ISPs use the public switched network in a manner analogous to long distance carriers.

In light of these prior rulings, Advocacy is concerned if the Commission were to deem dial-up access to the Internet an interstate service it could have such a significant impact that it should be subjected to rulemaking. The nature of the Internet is outside the original scope of the Commission's rules for telephone communications. Before reaching such an important decision the Commission would benefit from the information that a formal notice and comment period could provide. Also, a rulemaking would give the Commission an opportunity to conduct a regulatory flexibility analysis to determine the impact of the decision on small entities.

Advocacy recommends a rulemaking proceeding even if the Commission's order



specifically exempts existing reciprocal compensation agreements. Any decision that dial-up access is interstate would prohibit new agreements and would curtail the renewal of existing agreements as they expire. Furthermore, this decision would create strong implications on how ISPs should be regulated and would raise a possibility that access to the Internet could be charged on a per minute rate. Both of these factors have a substantial impact on the regulated parties, which makes a rulemaking proceeding the most appropriate forum to address these issues.

Therefore, should the Commission entertain the proposal to treat dial-up access to the Internet as an interstate service, Advocacy recommends that the Commission phrase this decision as a tentative conclusion in a notice of proposed rulemaking, which would allow the Commission an opportunity to receive public comment.

Thank you for considering these views.

Very truly yours,



Jere W. Glover,  
Chief Counsel for Advocacy  
U.S. Small Business Administration

cc: The Honorable Susan Ness  
The Honorable Harold Furchtgott-Roth  
The Honorable Michael Powell  
The Honorable Gloria Tristani  
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